

Application No. 09/683,659
Amendment dated July 2, 2004
Reply to Office Action of April 6, 2004

RD-26,623-1

REMARKS

Applicants appreciate the consideration shown by the Office, as evidenced by the Office Action mailed on April 6, 2004. In that Office Action, the Examiner rejected Claims 1-7, 11-20, 24-27, 30-32, 34-41, 44-49, 53-62, 66-69, 72-74, and 76-80. The Examiner has also objected to Claims 8-10, 21-23, 28, 29, 33, 42, 43, 50-52, 63-65, 70, 71, and 72. Claims 81-94 have been withdrawn. As such, Claims 1-94 remain in the case with none of the claims being allowed.

The April 6 Office Action has been carefully considered. After such consideration, Claims 1, 40, and 45 have been amended. Applicants respectfully request reconsideration of the application by the Examiner in light of the above amendments and the following remarks offered in response to the April 6 Office Action.

Restriction Requirement

The Examiner has acknowledged Applicants' election of Group I (Claims 1-80), made on February 24, 2004, and has made the restriction requirement final. Applicants hereby acknowledge the Examiner's action and maintain their traverse.

Rejection under 35 U.S.C. §102(a)

Claims 1-6, 18, 20, 25-26, 30-32, 34, 37-41, 44-48, 60, 62, 67-68, 72-74, 76, and 78-80 have been rejected under 35 U.S.C. §102(a) as being anticipated by Byrappa et al., Handbook of Hydrothermal Technology, Chapter 3: Apparatus, pp. 82-160, 2001 (referred to hereinafter as "Byrappa").

Applicants submit that independent Claims 1, 40, and 45 have each been amended to more clearly identify the invention by stating that the chamber defined by the wall, closed end, and sealed end of the capsule is substantially free of air. Support for the limitation can be found, for example, in paragraph [0041] - specifically, page 15, line 31, to page 16, line 1 - of the Specification.

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Applicants respectfully submit that, in order to anticipate under §102, a reference must teach every aspect of the claimed invention. Accordingly, Applicants submit that Byrappa does not teach every aspect of the amended claims. Namely, the reference does not teach, either explicitly or impliedly, that the sealed chamber of the capsule is substantially free of air. The reference is instead silent as to whether the sealed capsule is free of air, or whether air should be excluded from the capsule during filling, or whether air should be removed prior to sealing the capsule.

Applicants therefore submit that, because the reference does not teach every limitation of amended Claims 1, 40 and 45, the rejection of these claims, and the claims dependent thereon, under 35 U.S.C. §102(a) as being unpatentable over Byrappa is successfully overcome.

Rejections under 35 U.S.C. §103(a)

Claims 7, 19, 24, 27, 35-36, 49, 61, 66, 69, and 77 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Byrappa.

Claims 11-17 and 55-59 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Byrappa in view of Purdy (U.S. Patent 5,902,396).

Applicants submit that Claims 7, 11-17, 19, 24, 27, and 35-36 depend from independent Claim 1, and that Claims 49, 59-55, 61, 66, 69, and 77 depend from independent Claim 45. As previously presented, the rejection of independent Claims 1 and 45 under §102(a) has been overcome. As these claims are now in condition for allowance, the claims dependent thereon must also contain allowable subject matter. Applicants therefore submit that dependent Claims 7, 19, 24, 27, 35-36, 49, 61, 66, 69, and 77; and 11-17 and 55-59 are therefore allowable.

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In light of the amendment and remarks presented herein, Applicants submit that the case is in condition for immediate allowance and respectfully requests such action. If, however, any issues remain unresolved, the Examiner is invited to telephone the Applicants' counsel at the number provided below.

Respectfully submitted,



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